

# REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA (PRC) ON THE PREVENTION AND CONTROL OF MARINE POLLUTION FROM SHIPS

## China SPRO Frequently Asked Questions [FAQs] as at 20 March 2012

Compliance date —1 January 2012

The above Regulations require owners/operators of (a) any ship carrying polluting and hazardous cargoes in bulk or (b) any other vessel above 10,000 gt to enter into a pollution clean-up contract with a Maritime Safety Agency (MSA) approved Ship Pollution Response Organisation before the vessel enters a PRC port.

The requirements do not apply to Hong Kong or Macau or inland waterways in China PRC except Nantong (see Q&A. 43).

These FAQs reflect guidance given by the MSA and are believed to be correct as at 20 March 2012, but further updates may be necessary as the situation develops.

### **Ship Pollution Response Organisations (SPROs) Approval of SPROs**

1. Are the contract requirements now being strictly enforced in all Chinese ports?

From 1 March 2012, the China MSA had indicated that there would be strict enforcement of the contract requirements. It is possible that some local MSAs are more rigorously enforcing the requirements than others, but in any event owners are strongly recommended to ensure full compliance with the contract requirements in order to avoid fines and possible delay in port.

2. What is an MSA approved SPRO?

It is the clean-up organisation approved by the MSA and found to meet the requirements listed in the guidelines for Capacity Evaluations of SPROs. This means that such SPROs are approved to contract with the owner/operator for pollution response for Level 1, Level 2, Level 3 or Level 4. (For an explanation of "levels" see section on "levels for SPROs" below) Please note that this does not necessarily mean that the SPRO will operate on terms which conform with the International Group guidelines see Q&A 28, 32 - 35 below.

3. Will a "certificate" be issued by the MSA showing evidence that a SPRO has been approved?

A SPRO will receive a certificate showing that it has been approved by the MSA for clean-up response. This is called a Ship Pollution Response Unit Qualification Certificate (Article 10 of the Detailed Rules of the MSA of the PRC on the implementation of the Administration Regime of Agreement for Ship Pollution Response (Detailed Rules)). Such a certificate is normally valid for 3 years.

4. Will a "certificate" be issued by MSA to owners/operators showing that the owners/operators have satisfied the requirement to contract with a SPRO?

No.

5. How will we as the owner/operator know that a SPRO has been approved? A list of MSA approved SPROs is published on the following websites in Chinese:

<http://msa.gov.cn/Notice/NotList/00000000-0000-0000-0300-040000000008>  
[http://www.osp.cn/new/Index\\_news\\_disp.asp?nid=1092&Title=141A1](http://www.osp.cn/new/Index_news_disp.asp?nid=1092&Title=141A1)

The List also states the area where the SPRO is authorised to operate. Most are only authorised to operate in the port and near shore waters. However some are authorised to operate 20 miles off the shore, some in Shanghai are only authorised to operate within the port area and one is authorised to operate offshore (Tianjin). An unofficial English translation of this list is shown on all club websites and is updated regularly.

The SPRO must be domiciled in mainland China.

6. We, as the overseas owner/operator already contract with an approved contractor for sludge removal. Do we need to enter into another contract for clean-up response?

Yes. The requirements for sludge removal are completely separate from clean-up response. There is a separate approval procedure for sludge contractors and for clean-up contractors.

### **Signatories to the Clean-Up Agreement**

#### **Who should sign the clean-up agreement between the owner/operator and the SPRO?**

- 7 Can we, as an owner/operator based in China, sign the contract directly with SPROs? Who in our company can sign such a contract?

If you are domiciled in China then you must contract directly with a SPRO. The Legal Representative in your office must sign the clean-up Agreement.

8. We, as the overseas owner/operator have a branch office in China, can we sign the contract directly with SPROs? Who in our company can sign such a contract?

If you have a branch company or office or representative in China then you can either contract directly with a SPRO or through an MSA approved agent. (Clause I of MSA Notice 2011 No. 3 of 22 December)

Where the contract is signed directly by the Branch Office, without an agent, the Legal Representative in your branch office must sign the clean-up Agreement. Where this is the case the branch office must file the certificate of incorporation (business certificate) and letter of authorisation to the China MSA (see section below on letter of authorisation). If the contract covers multiple port entries the documents must be filed with China MSA, Beijing. However, if the branch office is signing only where the ship calls at one specific port, then the documents can be filed with the local MSA of the region in which that port is located.

9. We are an overseas operator and do not have a branch company or office or representative in China, will we need an agent to sign on our behalf?

No, it is not necessary. An overseas operator may choose to sign a clean-up contract directly with an MSA approved SPRO or appoint an MSA approved agent to sign the contract on their behalf.

In addition the master of the ship may sign a contract direct with the SPRO provided he is authorised to do so by the overseas operator (see below Q&A15). It is recommended that the master only signs the contract with the SPRO in cases of emergency since this could delay completion of arrival formalities for the ship in some cases. If the contract is signed through the master of a vessel, a ship's chop or stamp should be stamped on the contract.

10. We are an overseas operator with a branch office in China but the branch office does not have the resources to conclude contracts with SPROs directly, can we use an agent to sign the contract with SPROs on our behalf? If we can, who in the company should appoint the agent, the overseas head office or the branch office in China?

The contract can be signed either by the Legal Representative of the overseas operator, the Legal Representative of the overseas operator's branch office (but see Q&A 16 below) or by an MSA approved Agent. If an Agent is to be used the Legal Representative of the overseas operator should appoint the agent using an LOA and in some cases a contract, see Q&A 14 below.

11. Who, in the Head office or branch office of the overseas operator, should sign the contract with the SPRO?

The Legal Representative in the relevant office or other person legally authorised to do so. In exceptional circumstances the master may sign the contract on behalf of the owner/operator but see Q&A 15 below under Letter of Authorisation(LOA).

12. Who should sign the contract on behalf of the SPRO?

The Legal Representative or another person legally authorised to do so by the SPRO.

It is recommended that the SPRO should also put a company stamp on the contract in addition to the signature because company stamps are more important in China than signatures. All the company chops/stamp are filed with local police in China.

13. Should a charterer sign the contract with an approved SPRO?

No. Although the definition of "operator" included in the Detailed Rules refers to the owner, manager or actual operator of a ship, which might conceivably include the charterer, it is the owner or manager of the ship who has primary liability in the case of a spill and it is therefore the owner who should sign the contract with the SPRO and have control of the clean-up operation in the event of a spill not the charterer. Club cover may fall away for a charterer who voluntarily assumes pollution liabilities by contracting with a SPRO.

#### **Letter of authorisation (LOA)**

14. If, as an overseas operator without a branch company, office or representative in China, we choose to employ an MSA approved agent to sign the contract with the SPRO, do we also need to sign a contract with the agent?

No but you will need to sign a letter of authorisation (LOA) authorising the agent to sign on your behalf. The International Group has prepared a proforma LOA as contained in the most recent International Group circular on the Regulations. The proforma LOA is known to many approved agents and is already widely used. It has the footer "IG LoA dated 6 December 2011". It is recommended that this form be used. However, it is recommended that you also sign a contract with the MSA approved agent.

15. We, as the overseas owner/operator need to put into a port in China in an emergency. We understand we need to conclude a clean-up contract with a SPRO, and that the master can sign the clean-up contract on our behalf. Do we need to provide an LOA to the master?

Yes. You will need to provide authority by means of an LOA to the master. It is recommended that the LOA merely provides that "the master of xxxxx ship" has authority to sign and does not name the actual master, since it is possible that the master may change. See also Q.9 and the need for the company chop.

16. We are an overseas operator with a branch office in China, do we need to provide special authority to our branch office to sign the contract with the SPRO? If so should this be in the form of a LOA? MSA requires the branch office to file the certificate of incorporation (business certificate) and letter of authorisation to the China MSA. Some foreign operators' branches or offices in China have already filed details with China MSA and their names are published on the MSA website

(msa.gov.cn).

Is there a proforma letter of authorisation for such a purpose?

The International Group has prepared a proforma letter of authorisation as contained the Club's Circular No.11-015 on the Regulations which can be used for this purpose.

17. Who in our company can sign the Letter of Authorisation?

The Legal Representative of the company or other person authorised to sign on behalf of the company

18. Do we, as owner/operator, need to sign a separate LOA to authorise a person to sign each individual SPRO contract or can the LOA be sufficiently broad to include SPROs in several different ports.

The operator only needs to send and sign one authorisation letter i.e. the same letter can be addressed to and name different agents that have been authorised to perform specific functions (if this is the case), or it can be addressed to one MSA approved agent who may be authorised to sign contracts with different SPROs in different ports for different vessels. This depends on which, and how many, MSA approved agents the owner/operator is going to authorise depending on the nature of the operator's operations and trade to China.

### **The agent in China**

19. Can we appoint any person to be our agent?

There are various companies that offer the service of agent for the purposes of contracting with SPRO's. Many of these are associated with consortia SPROs and are used to supplement the choice of SPRO in ports which are not covered by the consortia. However, at least three have no association with a particular consortium. These are CMS, Huatai and Sunic. In the case of many of these companies it will be necessary to sign a service contract with them if you wish to employ them. These contracts contain details of the nature of the services and fees charged. However, in some cases a letter of authorisation is considered sufficient. This would be the case if all that is needed is to sign a contract with a single SPRO.

The agent must be domiciled in mainland China and must meet certain requirements laid down in the Notice issued by the China MSA dated 22 December 2011. A list of agents that have met such requirements is published by the China MSA on the China MSA website: <http://msa.gov.cn>. Attached. An unofficial translation of the full list of MSA approved Agents as at 20 March with contact details where known is shown on the Club's website.

Not all firms offering Agency services have MSA approval to offer services throughout China PRC. Some are only authorised to operate locally. The areas in which these agents are authorised to operate are shown on the table. There are other agents who are currently offering their services who are not approved by MSA to operate in any PRC ports. Members using the services of these firms should ensure that the actual contract is signed by the owner/operator and not by the agent. Failure to do so could result in rejection of the contract by the MSA.

### **Electronic documents and signatures**

20. Can the contract with the SPRO and the LoA with the MSA approved agent or other party be signed in electronic form (pdf format) and then sent via email to the appropriate persons or authorities?

Whilst, China MSA has confirmed that this is acceptable there is not yet a system in place to receive electronic communications.

21. To where should the Letter of Authorisation (LOA) be sent?

The LOA should be filed by the MSA approved agent. It is expected that in due course China MSA will announce an email address where LOAs can be lodged. Until such address is published the LOA should be sent by post/mail to MSA Beijing, c/o the Department of Ship Safety Pollution Prevention Department, for the attention of Mr Xu Shiming or Mr E Hailing.

22. To where should the contract with SPROs be sent?

This should be sent to the local MSA by the SPRO in the case of individual contracts, see Article 10 of the IG recommended Sample Agreement issued by the Club and annexed to Circular No. However, in the case of a contract with a lead SPRO of a consortium, the contract should be sent to the MSA of all the port or ports which the owner/operator intends to use.

Clause I, last paragraph of MSA Notice 2011 No. 3 of 22 December states:

The foreign operator or its agent may, directly or by fax, submit the concluded agreement for ship pollution response and the power of attorney (letter of authorisation) to the maritime administration agency for handling ship's entry and exit or operation examination and approval formalities."

23. Are there any special requirements with regard to electronic signatures on the documentation?

No.

**Legal Representative**

24. Who is the Legal Representative of the owner/operator?

The "legal representative" means the Owners'/Operators' statutorily designated representative pursuant to their Articles of Association, or similar. This person should sign the authorisation letter for appointing an MSA approved agent and should also sign the contract if that option is chosen. This is the same legal representative that will be named in the contract. See page 5 of the contract with footer IG Sample Agreement dated 6 December 2011.

25. Who is the Legal Representative of the SPRO?

The "legal representative" means the SPRO's statutorily designated representative pursuant to its Articles of Association. Under Chinese law, the legal representative may delegate this power to one particular person within the company or to more persons if there are more, such as directors of the board, who may be authorised to sign legal documents in the articles of association. If this is the case those directors can also sign the contract. The Legal Representative of a SPRO will be named in the MSA approved list of SPROs. A Legal Representative of the SPRO must be named in the clean-up contract and must sign it.

26. Should the person signing the SPRO contract on behalf of the SPRO be the representative listed in the approved list of SPROs? And should that person be listed as the Legal Representative in the list at the front of the contract?

The same person may be named in the MSA approved SPROs' list and also sign the contract on behalf of the SPRO. However, it is possible that different persons may be authorised to sign.

**The contract**

27. Is there a particular format for the contract?

On 1 June 2011 the MSA published a model contract entitled "Sample Agreement" to be used when the owner/operator concludes a clean-up contract with a SPRO.

28. Can any of these articles in the contract be changed?

The articles relating to the rights and obligations of the parties to this contract are mandatory and therefore cannot be changed.

Additional clauses may be added to the Agreement. Recommended additional clauses have been developed by the International Group and included in a recommended IG Sample contract which is contained in the Club's Circular No.11-015. The IG additional clauses are already accepted by many SPROs.

It should be noted that an option chosen in Article 8 of the recommend IG Sample contract should be indicated by a "√" in the box or filling in a blank, a decision to delete an option should be shown by an "x".

29. Can we see from the contract which the relevant local MSA is?

Yes. The first two numbers of the header will show which MSA is involved. The Key to the MSAs is shown on page 4 of the Sample Agreement.

30. If we, as the owner/operator are contracting with an umbrella/alliance/consortium SPRO who is contracting on behalf of several other SPROs, which number will be inserted?

The number of the lead SPRO. Please note that under Clause III of MSA Notice 2011 No. 3 of 22 December 2011, the lead SPRO is required to obtain approval to form a consortium from China MSA and needs to meet the requirements laid down in that Notice, e.g. that all SPROs in the consortium are Level 1 SPROs. A list of MSA-approved umbrella SPROs/alliances/consortia is published on the China MSA website: <http://msa.gov.cn>. An unofficial translation into English of the list is published on all club websites.

31. The agreement refers to Party A and Party B. Where are these terms defined?

The parties are named on page 5 of the Sample Agreement. Party A is the owner/operator. Party B is the SPRO.

32. What are the additional clauses recommended in the IG sample contract?

The International Group has recommended some additional clauses principally in relation to termination and insurance.

The International Group recommends that the owner/operator ensures that a Level 1 SPRO has at least RMB 2 million to cover its liabilities under the contract (principally Article 7 of the IG sample contract), Level 2: RMB 1.5 million, Level 3 RMB 1 million and Level 4 RMB 500,000. (Article 6)

It is recommended that the Agreement include a clause permitting the parties to terminate during a response to an incident after discussion with MSA. (Article 6)

It is recommended that in Article 8 the parties choose the courts of China to resolve disputes.

It should be noted that "√" should be used instead of "x" in Art. 8 of the recommend IG Sample Agreement because the former means the two parties has made the choice and the latter means

the parties choose to delete it in accordance with paragraph 4 of the opening introduction of MSA Sample Agreement.

33. If we are in doubt on the contract terms, or we receive a contract which is different to the recommended IG Sample Agreement, what should we do?

Contact your Club as entering into a SPRO contract with terms differing from those in the recommended IG Sample Agreement could result in Club cover problems.

34. The SPRO is "MSA approved" but does not accept the insurance provision of the supplemental clauses, what should we do?

Contact your Club. If there is a possibility of contracting with a SPRO in a particular port which has insurance and whose contract conforms, the member should opt for the SPRO with insurance. When it is necessary to contract with a SPRO on an urgent basis and none are available with insurance in the area, then it would seem reasonable to suggest that the contract should just be for that voyage and not the annual contract. It should be noted that some SPROs do not realise that insurance of the type required, is available in China PRC. It is possible to obtain this insurance from PICC Property and Casualty Company Limited. The relevant policy bears the footer "Version 2" Contact details for PICC can be obtained from the Club. Ping An are also developing a policy. Please note that any insurance policies have to be reviewed by the club.

35. The SPRO is "MSA approved" but does not accept the termination of work provision of the supplemental clauses, what should we do?

Contact your Club. Again, if this has to be accepted in the case of an emergency it is suggested that the contract be entered into on a voyage basis. However, it should be noted that the MSA Sample Agreement does contain a clause relating to termination of the contract (when not engaged in clean up) (Article 6,2). Care should therefore be taken to ensure that an appropriate notice period e.g. 30 days is inserted in this clause in any event.

36. Are we, the owner/operator, free to contract with any SPRO approved by the MSA?

Yes, depending on whether the SPRO has the appropriate level of qualification, see the Annex attached to the Club's Circular No.11-015. SPROs may be qualified for different levels. Level 1 is the highest level of qualification. The criteria for determining the level of SPRO are shown in the guidelines for the capacity evaluations of ship pollution clean units published on 1 June 2011. Please note whilst a SPRO may have MSA approval, in order not to prejudice club cover an owner should ensure before signing a contract with a SPRO that certain conditions are fulfilled, namely that the SPRO's contract is on the International Group recommended wording, that the SPRO has acceptable insurance and that the SPRO's clean-up response tariff has been reviewed by ITOPIF and found acceptable. If a SPRO offers a contract with wording other than the IG wording, fails to provide evidence of acceptable insurance (Q&A34) and fails to provide an acceptable tariff (Q&A 52) you should contact your club.

Level 1 approval is carried out by China (Beijing) MSA, approval of other levels is carried out by local MSAs.

37. How do we, the owner/operator determine if the cargo that our ship is carrying means that it falls within the scope of the contract requirements?

If the vessel is carrying oil in bulk or a "liquid hazardous cargo other than oil in bulk" then the contract requirements will apply.

The MSA issued a Notice in February 2011 with an accompanying "Catalogue of Cargoes Apt to Cause Pollution during Ocean Carriage" for the purposes of the Regulations and the MSA Sample Agreement. In terms of those cargoes not listed, the Notice states that "*Cargoes that are not listed*

*in the Catalog but are suspected of apt to cause pollution and cargoes with uncertainty whether apt to cause pollution shall be submitted to an appraisal agency recognized by the Maritime Safety Administration for test and assessment."* It has been confirmed that the list pertains only to cargoes carried in bulk and not those carried in containers. It does however include liquefied gases.

The Catalogue in Chinese can be found on the following website:

<http://msa.gov.cn/Notice/NotList/00000000-0000-0000-0300-040000000006>

The MSA has confirmed that semi-submersibles and Mobile Offshore Drilling Units(MODUs) must meet the requirements.

38. Annex IV in some versions refers to Classes 1— 4. Are these the same as Levels?

Yes.

39. Should we, the owner/operator sign the contract on a voyage basis or annual basis or otherwise?

This will depend on the trading pattern of the ship and is left to the discretion of the individual member. However if a member due to an emergency is forced to sign a contract which does not conform with the International Group guidelines, or for which the response tariff is unreasonably high, it is recommended that this is done on a voyage basis to allow an opportunity for further negotiation for any subsequent calls. The contract will be valid for the period of time agreed between the operator and the SPRO. The contract contains a clause that allows for it to be agreed for a fixed term of years or months, or on a per voyage basis.

40. Are any local MSAs or SPROs prohibiting owners from signing contracts on a voyage basis and requiring them to sign contracts on an annual basis?

It would be in contravention of China MSA Notice 2011 No.3 dated 22 December 2011 and also the MSA's Detailed Rules if any local MSAs or SPROs prohibited the signature of contracts on a single voyage or annual basis.

41. The area we are trading to does not have any SPRO with which our vessels are required to contract, what should we do?

In accordance with Supplementary Notice No. 359 of July 2011, Clause 3 and Clause VI of MSA Notice 2011 No. 3, the MSA may, as a temporary measure, permit a contract with an approved SPRO from a nearby port to be used where none is available in the relevant port..In addition some local MSAs have introduced their own temporary measures, e.g. Liaoning, Tianjin and Yingkou. Where no SPRO appears on the list of MSA approved SPROs for the port in question, members are recommended to check with their agents to find out whether temporary measures are in place in that port.

42. Can we, as owner/operator enter into one contract with a specific SPRO but for a number of different vessels calling at the port where the SPRO has been approved?

Yes, the contract allows for this, see Appendix 1 of the recommended IG Sample Agreement.

43. We, the owner/operator understand that the requirements do not apply to inland waterways in China PRC including ports on the Yangtze River. Is this true?

Yes, with the exception of Nantong. It is understood that the requirements will only apply to Nantong Port on the Yangtze River.



44. We, the owner/operator, are taking delivery of a new vessel in a Chinese port. Will we need to ensure that a contract is in place with an approved SPRO for that vessel for the purposes of its maiden voyage even if it is not calling at a Chinese port in the following year?

Yes.

**One stop service/ umbrella SPROs/ alliances/ consortia**

In accordance with Clause 4 of the Supplementary Notice on Relevant Issues Concerning the Implementation of the Regime of Agreement for Ship Pollution Response, a SPRO may, acting on behalf of its branches or interlocking units, provide a one stop service.

The MSA requires the umbrella SPROs/alliances/consortia to supply all relevant documents to the China MSA for review as laid down in MSA Notice 2011 No. 3 issued by the China MSA dated 22 December 2011, Clause III. Therefore, before signing a contract with an umbrella SPRO/alliance/consortium on behalf of all members of the umbrella SPRO/alliance/consortium, operators should check that it has been approved by the China MSA. A list of MSA-approved umbrella SPROs/alliances/consortia is published on the China MSA website: <http://msa.gov.cn>. An unofficial translation into English is to be found on club websites.

45. Can we, as the owner/operator, enter into a contract under the umbrella of one SPRO that has been approved in different ports?

In addition, can a SPRO have representatives in various Chinese ports that will be included in one contract for these ports or must each operator contract with different SPROs depending on the port?

Yes. There is provision for one SPRO to form an alliance/consortium with SPROs in other ports. If the umbrella/consortium is fully operational this SPRO, known as the "lead SPRO", may then contract with an owner/operator on behalf of other SPROs under its umbrella/consortium provided those SPROs are included in the published list of MSA approved umbrella/consortia (see Q&A 46 below). In any event, the parties under the agreement are the owner/operator and the SPRO in the relevant port for the purposes of operational matters. The exception to this is the consortium of One Call Oil Spill Response Chain Organization where notifications under Article 1 of the Agreement are centralised.

Whilst it is not compulsory to file a signed contract according to Article 25 of the Detailed Rules, this may facilitate entrance of the ship to port. Furthermore some local MSAs require the contract to be filed. Therefore it is recommended that the relevant contract is filed with the relevant MSA at each port of call.

46. Do we have the names of those "umbrella" alliances/consortia?

Yes. A list of MSA-approved umbrella SPROs/alliances/consortia is published on the China MSA website: <http://msa.gov.cn>. An unofficial translation into English is to be found on club websites. This list provides the name of the consortium, the lead SPRO who will contract on behalf of the other SPROs in the consortium, and the members of the consortium. This list varies from time to time as members of the consortium are added or removed.

In addition OSRO China (based in Hong Kong) offers a service to facilitate an alliance of SPROs in China. Shenzhen Pearl River Jia Ren Oil Spill Response operates an alliance of 3 SPROs.

It would seem that the umbrella/alliance/consortium SPROs intend to charge response tariff for all

the SPROs in their individual umbrella as required under Clause III.3 of MSA Notice 2011 No. 3. However, the response tariff varies from consortia to consortia.

With regard to retainer fees/standby rates, there is no uniform rate. This has not proved possible due to special rules or agreements which govern certain ports. (see Q&A 56 below)

The Shanghai Union is another exception. This is a Group of Level 1 SPROs based in Shanghai who have agreed to contract on the same terms and to charge the same fees.

47. Does a copy of the contract need to be kept on board?

Yes it does. Article 1.2 requires Party A (owner/operator) to keep a copy of the Agreement on board all the ships listed in the Agreement and to make sure that the crew are familiar with the Agreement.

48. Does the Agreement require the Party A to keep any other documents on board?

Yes. Article 1.2 of the Sample Agreement also requires Party A to keep on board a copy of the Pollution Response Operation Plan formulated by Party B.

49. What is a Pollution Response Operation Plan (PROP)?

A Pollution Response Operation Plan or PROP is a contingency plan prepared by the SPRO for implementation in the case of a spill. It is reviewed by MSA as part of the SPRO assessment for approval. The PROP must be filed by the SPRO with the local MSA. Before signing the contract the owner should ask the SPRO for a copy, since under Article 1.2 of the clean-up Agreement the PROP should be kept on board and provided to the owner in English and Chinese, and the ship's crew should be familiar with its contents.

### **Retainer/Standby fees**

The retainer/standby fees to be charged by the SPRO will be listed in Appendix II.1 of the Sample Agreement. The law states that such fees should be reasonable (Article 20 of the Detailed Rules and MSA 2011 Notice No. 2). The China Association of Communication Enterprise Management (CACEM) published a guidance document on fees to be charged by way of retainer, including a revised set of reduced retainer fees published on 9 December 2011, although the reduction is not significant and their retainer fees are still considered to be unreasonably high.

Some retainer fees are published in Chinese on the web site of the Yantai Centre (<http://www.osp.cn>). Some SPROs in a particular port have agreed to all charge the same fee, e.g. Rizhao and Tianjin. The local MSA may publish the fee structures, e.g. in Liaoning, Shanghai and Tianjin.

50. Are retainer fees covered by the Club?

No. This is an operational expense.

51. At which point on the ship's arrival would it be reasonable to expect the SPRO to charge a retainer fee?

Since the SPRO should be on standby from the point at which the ship enters the service zone it would be reasonable to charge the retainer fee from this point. However, there is no law which governs how and when the SPRO can charge retainer fees. This is a matter for individual negotiation.

## **Response tariffs**

Appendix II.2 of the Sample Agreement sets out the response tariff, i.e. the costs which will be charged in the case of a spill.

52. How do we determine if the response tariffs are reasonable?

Members should ensure that response tariffs are incorporated into the contracts and should contact their Club if the response tariff has not previously been considered by the International Group.

## **Others**

53. If the agent becomes bankrupt, or disappears, will the contract with the SPRO become invalid?

Whilst the law is not explicit on this point, it is considered likely that if the agent becomes bankrupt or disappears, the contract between the owner/operator and the SPRO will remain valid. However, the contract between the owner/operator and the agent will no longer be valid.

54. Is there an International Group recommended charter party clause to describe the division of responsibilities between owner and charterer for compliance with the new regulations?

No. However, members should ensure that the terms of the charterparty do not prevent the owner from being the contracting party for the clean-up Agreement (see Q&A 13 ).

55. Are there any penalties if I do not conclude a contract with a SPRO?

Yes. Article 68 of the Regulations states that failure to conclude a clean-up contract can result in a fine of between RMB 10,000 and RMB 50,000. Article 58 provides that if a ship does not comply with the regulations, the MSA can order rectification of the omission and if this fails they can prevent the ship from entry to or departure from a port.

56. Are there any rules which apply to particular provinces or ports?

There are no special rules provided by China MSA to govern a particular province or port, however some local MSAs issued their own rules and notices, most of which are in accordance with the published by China Ministry of Transport (MOT) and China MSA. In addition some local rules and notices contain difference requirements.

The Rules of MSA Shanghai require ships to sign confirmation form before the ships can depart from the port. In addition although overseas operators can sign the contract directly with MSA approved SPROs, as regards overseas operators with branch offices in Shanghai, the signed contract should be confirmed by that branch office or if overseas operators do not have branch office in Shanghai but do have a branch office in other locations in China by that branch office.

Check List for contracts:

1. Is the SPRO contract in the IG recommended form? If "No" see Q&A 33
2. Has the SPRO provided evidence of insurance? Q&A 34
3. Has the SPRO provided a clean-up response tariff? Q&A 52
4. Does the contract provide for standby/retainer fees? Q&A 51

5. Is the person signing the contract on behalf of the owner/operator either the Legal Representative of the owner/operator, the Legal Representative in the MSA's approved owner/operator branch office, an MSA Approved Agent (Q&A 7-13)?
6. Has the MSA approved agents been provided with an LOA? Q&A 14